Date Signed: March 17, 1989
Revised: June 1998
Revised by: Judith Fraser

MEMORANDUM

SUBJECT: Scope of Remedial Action Programs in Schools under the Lead Contamination Control Act of 1988

FROM: Michael B. Cook, Director (signed by Michael B. Cook)
Office of Drinking Water

TO: Regional Drinking Water Branch Chiefs

Since passage of the Lead Contamination Control Act of 1988 (LCCA), a number of issues regarding the scope of water cooler replacement programs have arisen. This memo addresses two of the most frequently asked questions.

ISSUE 1

Does the Lead Contamination Control Act of 1988 require that the remedial action programs for lead in schools ensure that all water coolers that are not lead free be repaired, replaced, permanently removed, or rendered inoperable?

RESPONSE

No. Water coolers that are tested and found not to contribute lead to drinking water need not be repaired, replaced, permanently removed, or rendered inoperable, even if they are not lead free.

DISCUSSION

The Lead Contamination Control Act of 1988 amends the Safe Drinking Water Act by adding a Part F[1]. Section 1461(2) defines "lead free" broadly; with respect to water coolers, it means:

---

[1] The Contamination Control Act of 1988 specifies where each new provision in the Act is to be codified in the Safe Drinking Water Act (SDWA). In this memorandum, I have used the SDWA citations.

each part or component of the cooler which may come in contact with drinking

> water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead.

Section 1464(d)(1) requires each State to establish a program "to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination" in schools. Section 1464(d)(3) states that

> In the case of drinking water coolers, such program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be adequate to ensure that . . .all such water coolers in schools . . . are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water.

You have asked whether the programs for remedying lead contamination in school drinking water must require that all water coolers that are not lead free be repaired, replaced, permanently removed, or rendered inoperable, or whether this requirement only applies to coolers that (1) are not lead free and (2) contribute lead to drinking water. I believe the latter interpretation is correct.

The last sentence of Section 1464(d)(3) plainly states that the "repair, replace, remove" requirement applies to "all such water coolers," and the previous sentence clearly indicates that "such water coolers are those that are not lead free." Thus, I conclude that the "repair, replace, remove" requirements only applies to water coolers which are not lead free and are tested and found to contribute lead to drinking water. The legislative history of this provision is consistent with this interpretation. See H.R. Rep. No. 1041, 100th Cong., 2d Sess. 16 (1988). In addition, this interpretation is sensible; rather than requiring automatic repair, replacement, etc., of all water coolers that are not lead free, the school is allowed to test each cooler to determine whether, in fact, it does add lead to the water.

ISSUE 2

Remedial action programs for schools mandated by the LCCA must ensure that water coolers that are not lead free be repaired, replaced, permanently removed, or rendered inoperable unless they are tested and found not to contribute lead to drinking water -- does this requirement apply to all coolers that are not lead free, regardless of how little lead they contribute?

RESPONSE

No. Water coolers need not be repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found within the limits of testing accuracy not to contribute lead to drinking water. Thus, only coolers which can be shown to contribute lead to drinking water need be repaired, replaced, or removed.

DISCUSSION

As discussed above, under Section 1464(d)(3), remedial action programs for lead in school drinking water must include measures that are adequate to ensure that all drinking water coolers that are not lead free are "repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water" (emphasis added). Thus, Congress recognized that, at low levels, testing accuracy decreases and that to impose the "repair, replace, remove" requirement on a cooler which contributes small amounts of lead may not be appropriate.

The guidance document and testing protocol entitled Lead in School Drinking Water (EPA 570/9-89-001) recommends that action be taken to limit exposure or reduce lead in water whenever lead levels exceed 20 ppb. We believe that this trigger provides adequate protection of health in situations with exposure patterns such as those found in schools. The guidance document provides a way to identify which parts of the plumbing, including water coolers contribute lead to water. the protocol has been field tested during its development and we are confident that it reliably identifies lead levels of concern and roughly identifies the primary sources within the plumbing system. However, we do not now have enough data to know or predict the sensitivity of the protocol. This means we cannot yet determine a level less than 20 ppb that we can be positive is definitely coming from the cooler (as opposed to sources upstream from the cooler). As we develop a track record, we expect to obtain a better estimate of the protocol's sensitivity. Until then, I recommend that you limit the "repair, replace, remove" requirement to coolers that test above 20 ppb where you are confident that a significant portion of the lead is contributed by the cooler.

NOTE: Recent agreement between Consumer Product Safety Commission and Scotsman Group, Inc. provides for replacement or refund of any Halsey Taylor cooler manufactured before April 1, 1979, that contributes in excess of 20 ppb of lead. Lead measurements must be based on EPA testing protocol published "Lead in School Drinking Water" guidance, and on analysis from EPA certified laboratories.